

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

### **I. STATUS OF CLAIMS**

Claims 22-41 are pending in this application. Claims 25-27 and 32-36 have been allowed. Claim 37 has been amended herein to overcome the 37USC112, second paragraph rejection. It is respectfully requested that this rejection be withdrawn in light of these amendments. Independent claims 22 and 37 recite that the swipe card reader is adapted to receive (claim 22) or read (claim 37) information from a swipe card for activating one or more functions of the amusement device, wherein said one or more functions activated comprises at least one of activation of movement of the device and activation of a defense for the device. Claims 28-31 have been canceled without prejudice. New claims 41 has been added. It is respectfully submitted that no new matter has been added by virtue of this amendment. Support for the new and amended claim may be found throughout the specification as originally filed. In particular, support for the new and amended claims may be found on page 7, lines 14-19. of the present specification.

### **III. REJECTIONS UNDER 35 U.S.C. § 103(a)**

**Claims 22-23 and 37-38 were rejected under 35 U.S.C. 103 (a) over U.S. Patent No. 5,768,223 to Li et al ("the Li patent") in view of U.S Patent No. 5,446,791 to Wooley et al. ("the Wooley patent").**

Initially, Applicants acknowledge with appreciation the Examiner's indication in the instant Office Action that claims 25-27 and 32-36 have been allowed.

As noted above, independent claims 22 and 37 recite that the swipe card reader is adapted to receive (claim 22) or read (claim 37) information from a swipe card for activating one or more functions of the amusement device, wherein said one or more

functions activated comprises at least one of activation of movement of the device and activation of a defense for the device.

It is respectfully, asserted that the combination of Li and Wooley fails to teach or suggest an amusement device wherein the swipe card reader is adapted to receive (claim 22) or read (claim 37) information from a swipe card for activating one or more functions of the device, wherein the one or more functions activated comprises at least one of activation of movement of the device and activation of a defense for the device, as required by amended independent claim 22 and claim 37.

As conceded by the Examiner, the Li patent fails to describe a swipe card reader as required by amended claims 22 and 37. The Examiner attempts to cure the above deficiency by citing the Wooley patent, which the Examiner alleges discloses a swipe card reader used to synthesize commands for generating speech or sound in a variety of devices including games. The Examiner took the position that it would have been obvious to one skilled in the art to incorporate a swipe card reader for the card reader of Li for the purpose of providing an improved data storage and retrieval system which controls a voice or sound synthesizer.

In the last office action, the Examiner has reasoned that Wooley is relied upon merely to teach that information carried on a card can be in swipe format. However it is respectfully submitted that one skilled in the art would not have considered combining Li with Wooley as Li does not disclose or suggest the use of a swipe card format. In fact Li teaches of an audio device having a plurality of control cards and an audio unit. Further Wooley limited to a swipe card for controlling voice or sound synthesizers. One skilled in the art would have no motivation to have considered combining Li with Wooley. It is respectfully submitted that the Examiner is engaging in hindsight reconstruction of the present invention by picking and choosing elements from the cited references. As held in a leading case:

“We do not ‘pick and choose among the individual elements of assorted prior art

references to recreate the claimed invention' but rather look for some teaching or suggestion in the references to support their use in the particular claimed combination. "Symbol Technologies, Inc. v. Opticon, Inc., 935 F2d. 1569 (Fed. Cir. 1991).

Again, Wooley is limited to a swipe card for controlling voice or sound synthesizers and not for an amusement device swipe card that activates that is adapted to read or receive information from a swipe card to activate one or more functions of the device that include at least one of activation of movement of the device and activation of a defense for the device. As recited in claims 22 and 37.


Thus, for the reasons mentioned above, withdrawal of the rejections to claims 22 and 37 is respectfully requested. The claims depending on claims 22 and 37 are also believed allowable by virtue of their dependency on claims 22 and 37.

#### IV. CONCLUSION

In view of the actions taken and arguments made it is believed that all pending claims as currently presented are now in condition for allowance.

According to currently recommended Patent Office policy, the Examiner is requested to contact the undersigned at the telephone number provided below in the event that a telephone interview will advance the prosecution of this application. An early and favorable action is earnestly solicited.

Respectfully submitted,



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